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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

Nos. 111 and 112

JULIUS ROSENBERG AND ETHEL ROSENBERG,
Petitioners,

MORTON SOBELL,
Petitioner,

vs.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE.*

ROYAL W. FRANCE,
Attorney for Amici Curiae,
104 East 40th Street,
New York 16, N. Y.

IN THE

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Motion for Leave to File Brief and Brief *Amici Curiae.*

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for the signers of the accompanying brief as *amici curiae* and for approximately 50,000 other Americans who have specifically authorized, by their signatures, the inclusion of their names in this brief (see Exhibit A, form of authorization) and whose names are here appended (see Exhibit B), respectfully moves this Honorable Court for permission to file said brief. Permission to file this brief has not been sought from the Solicitor General.

The undersigned are of the opinion that in a case unprecedented in the peace time history of the United States, in which two of the petitioners have been sentenced to

death and one to a thirty year prison term, although hitherto lesser sentences were given to actual confessed or convicted war time traitors and where so many citizens feel such grave doubts lest the emotions of our times may have affected the verdicts, a hearing of the case by this Court would be highly desirable.

Wherefore, it is respectfully requested that this Honorable Court grant this motion for leave to file the annexed brief *amici curiae*.

ROYAL W. FRANCE,
Attorney for *Amici Curiae*,
104 East 40th Street,
New York, N. Y.

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UNITED STATES OF AMERICA.

Motion for Leave to File this Brief as Friends of the Court.

We, the undersigned citizens of the United States, jointly and severally, respectfully ask leave of the Court to file this brief as friends of the Court on behalf of the petitioners above named.

Brief *Amici Curiae.*

We are deeply desirous that this Court should reconsider its refusal to review the case of the Rosenbergs and Morton Sobell. Approximately fifty thousand other Americans who are equally distressed have authorized the inclusion of their names in a petition to this Court to consider the case. Their signatures are being submitted herewith. Where so many people have signed such a petition there must be many more of our fellow citizens who

are deeply concerned over the natu
afflicted with doubts as to whether
carrying them out. Recogni ing, as
be tried not by the general public
law in the Courts, we nevertheless
thousands of our fellow citizens in
to allow the extreme penalty to b
before accepting the appeal and rev

In support of this petition we p
doubts held by these countless Ame
of the verdict and sentence and the
should review the case.

We are not demanding that the
we insensible of the danger of esp
times of trouble; but we are askin
Ethel Rosenberg and Morton Sob
guilty beyond reasonable doubt and
tent evidence of the crime of whic
whether, if the Rosenbergs go to
doubts will linger to harass and
people. We are alarmed to think
emotional tension, cold war and fear
might put a period to civilization
suffer for a crime which they
punished beyond their desert.

We ask first of all if the trial
Rosenberg and Morton Sobell was
in an atmosphere in which an imp
the evidence was possible? The fu
whether the Rosenbergs and Sobell
has deeply troubled thousands of
tain this is the request and the onl
this Court. It is, we admit, a grave
Court already crowded beyond its
review cases from lower tribunals sa
circumstances. This case we carnes
tional. It is a matter of life or s

ure of the penalties and
r justice will be done by
as we do, that cases must
ie but by due process of
ss join with these many
in urging this Court not
be exacted in this case
reviewing the case.

present our view of the
mericans as to the justice
he reasons why this Court

he guilty go free, nor are
espionage and treason in
sking whether Julius and
Sobell were really proved
nd on relevant and compe
hich they were accused or
to the death chair, those
nd distress the American
hink that in this time of
fear of an atomic war that
ation, innocent people may
never committed or be

trial of Julius and Ethel
was fair. Was it conducted
impartial consideration of
he fundamental question of
Sobell have had a fair trial
of Americans. To ascer
e only request we make of
grave matter to ask a high
l its normal capacity to
als save under exceptional
earnestly believe is excep
or shameful death for a

father and mother of young children who have never before been accused even of misdemeanor and of the living death of thirty years imprisonment. More than this, the highly emotional atmosphere in which the case was tried in this time of cold war and fear made it possible for the prosecution to point to the alleged political beliefs of the Rosenbergs and Sobell as evidence of guilty intent or proof of motive thus bringing the doctrine of guilt by association into a capital case in a highly inflammatory way.

When in such circumstances, two Americans of hitherto good repute are given an unprecedented sentence, is it too much to ask the highest tribunal of the nation at least to inquire into the facts of this trial so as to be sure and to reassure the American public and the world that there has been no miscarriage of justice? Never before in time of peace or war has a civil court condemned accused persons to death on a charge like this in the United States of America. On the contrary, have we not been quick to condemn executions in other countries where we have had the suspicion that the political opinions of the accused might have clouded the verdicts? This in itself should give us pause to make certain for our own peace of mind and our reputation in the world that there is no reasonable doubt of guilt and that the customary legal safeguards were present in the trial. We are not suggesting a public opinion test for judicial action but are pointing out that this is no ordinary case but rather one whose wide implications give it extraordinary importance.

Again, the use of the testimony of self confessed criminals, such as was admitted in this case, although such testimony is certainly inescapable at times, must always be received with reserve. This is especially true in a capital case where the informer testimony without which, as the Court of Appeals itself stated the convictions doubtless could not stand, may well have been influenced, if not induced, by their belief that by testifying they would escape dire punishment or secure immunity or mitigation of sen-

tence. It surely is not without significance that the Greenglasses, self confessed criminals, have been let off, one altogether and the other with a relatively light sentence while the Rosenbergs, protesting their innocence, are under sentence of death.

We must ask whether the crime for which the death and thirty year sentences were imposed was ever actually committed. The trial judge stated that if the espionage is committed in time of war the punishment might be death or thirty years and then stated that at the time the alleged conspiracy commenced we were at war. But we were not at war with the Soviet Union then or since. If espionage had been committed for England with whom we were not at war but allied would it have been in accordance with the intent of the statute to hold that we were at war?

Moreover, the extreme penalty was imposed because the trial judge believed, as he stated that the conspiracy had put the A bomb into the hands of the Russians, caused the Communist aggression in Korea and "who knows but that millions of innocent people may pay the price of your treason." Is discretion in imposing the death penalty proper when the expressed reasons for exercising the discretion are, to say the least, dubious? Was the information alleged to have been disclosed really a vital, atomic secret in any true sense? Were competent scientists called to prove that such secrets could have been acquired by a man of such limited scientific education and knowledge as the informer or transmitted as claimed by the prosecution? Does the fact that the man Fuchs was convicted in England as the person responsible for the Russians getting the secret, that he was given a prison term and that he was a scientist have any bearing on the expressed thoughts of the trial judge in imposing the extreme penalty? Were these matters sufficiently considered in the trial? The jury's verdict and the judge's death sentence were based directly on the informer's meagrely corroborated testimony that vital atomic information had been transmitted.

We are not asking this Court to review the weight of evidence. What we are asking is that the Court consider whether in the light of the sort of evidence that was produced and was not produced by the prosecution, the sentence may not have been unduly influenced by political prejudice and hysteria. If that possibility exists we feel that this case by reason of its implications and of the penalties imposed is of the sort that warrants review by this Court.

These are difficult times for all Americans; for all the world; but there should be no suspicion of bias or indifference or that we are vindictively punishing a crime such as this with the unprecedented sentence of death. Subsequent proof, if it ever came, of innocence, if it came too late to save these lives, would forever haunt us if we had failed to go the second mile.

Under all the circumstances of this case, cannot this Court at least assure us that Julius and Ethel Rosenberg and Morton Sobell will receive the fullest possible hearing? Otherwise, grave doubts as to the justice of the case will persist and multiply and the innocent may be punished irretrievably. We firmly believe, as the moral sense of mankind has agreed for centuries, that it would be far better that ten guilty persons escaped punishment than that one couple, if innocent, should by any legal mischance, be sent to their deaths.

Dated: November 2, 1952.

Respectfully submitted,

s/ Royal W. France,
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EXHIBIT A

AMICUS BRIEF * IN THE ROSENBERG CASE

WE BELIEVE that the trial of Julius and Ethel Rosenberg and Morton Sobell on a charge of conspiring to commit espionage, which resulted in death sentences for the Rosenbergs and a 30 year sentence for their co-defendant, lacked guarantees of fairness which all Americans have a right to expect under the Constitution.

WE BELIEVE that the Prosecutor and Trial Judge permitted fear and prejudice to dominate the trial by 1) attributing to the defendants social beliefs which are today the target of virtually every public tribunal, and 2) attributing to them reversals and casualties suffered in Korea.

WE BELIEVE that transient political and social passions have no place in our courts, that to deprive even one American of the right to a fair trial is to injure the rights of all Americans.

WE THEREFORE authorize the inclusion of our names in an Amicus Brief to the Supreme Court of the United States, petitioning that the verdicts and sentences be set aside, and that a new trial be ordered based on Constitutional guarantees of impartiality and fairness in accordance with the best traditions of American justice.

Name	*Address*	*City*	*State*

Please return to: NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE, 1050 6th Avenue, New York, N. Y., BR 9-9695.

Name of person returning this Amicus.....

Address.....City and State.....Organization.....

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* Signers of an Amicus Brief act as friends of the court, petitioning because they believe an important principle is at stake.